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Case of the Month

The Affordable Care Act's individual mandate is unconstitutional because it is not a tax.

The [U.S. Patient Protection and Affordable Care Act \(ACA\)](#) imposes an individual mandate that requires individuals to maintain health insurance coverage or be assessed a penalty by the IRS known as a shared responsibility payment. In 2012, the U.S. Supreme Court in [National Federation of Independent Business v. Sebelius](#), 567 U.S. 519 (2012) considered and upheld the constitutionality of the individual mandate as an exercise of Congress' taxing powers. *Nat'l Federation of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012). Enacted in 2017, the [U.S. Tax Cuts and Jobs Act \(TCJA\)](#) reduced the shared responsibility payment amount to \$0, effective January 2019. Eighteen states, including Texas, and two private citizens ("the states"), sued the federal government claiming that the individual mandate was unconstitutional because it no longer generated revenue and therefore was not a tax. The district court granted the states claim for declaratory relief, declaring the individual mandate unconstitutional and the remaining provisions of the ACA inseverable and invalid. The federal government appealed.

The Fifth Circuit Court of Appeals first considered whether the parties had standing to bring suit. The court held that the private citizens injuries for standing were the costs and time spent complying with the mandate, and that the states had standing because of the reporting requirements and associated costs that arise as a result of the mandate. The court then considered whether the individual mandate was a constitutional exercise of Congress' taxing power and held that it was not. Contrary to the law at the time of the U.S. Supreme Court's holding in *NFIB*, the shared responsibility payment is \$0 and the individual mandate no longer has the attributes of a tax justifiable under Congress' taxing power. The Fifth Circuit Court of Appeals remanded the case to the district court to conduct a more precise severability analysis that explains how each provision of the ACA is linked to the individual mandate. [Texas v. United States](#), 945 F.3d 355 (5th Cir. 2019).

Why Is This Case Significant?

The decision regarding the severability of the individual mandate will impact the application of the ACA and may result in the entire statute being invalidated. Until a final determination is made, colleges should continue to follow all ACA requirements.

Highlights

Join us at the 24th Annual
[UNT Texas Higher Education Law Conference](#)
March 23-24

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Evidence of temporal proximity alone failed to sustain a former employee's claim of retaliation where she reported misconduct under the [U.S. False Claims Act](#) and was subsequently terminated due to a reorganization. [Musser v. Paul Quinn Coll.](#), 944 F.3d 557 (5th Cir. 2019).

Former employee's wrongful termination claim dismissed for failing to submit his corrected charge within the Equal Employment Opportunity Commission's filing period that began on the date his initial defective charge was first received. [Owens v. Dallas Cty. Cmty. Coll. Dist.](#), No. 19-10037, 2019 WL 6726163 (5th Cir. Dec. 10, 2019) (not designated for publication).

Female professor provided sufficient evidence of [U.S. Equal Pay Act](#) violations to survive a motion to dismiss where she performed equal work for a lesser pay than her male counterpart in the same academic department. [Equal Employment Opportunity Comm'n v. Univ. of Miami](#), No. 19-23131-CIV, 2019 WL 6497888 (S.D. Fla. Dec. 3, 2019).

Former employee rejected for an internal position provided sufficient evidence of age discrimination and retaliation to survive a motion to dismiss where his supervisor made discriminatory remarks about his age when he expressed interest in applying and later intervened in the hiring process. [Rhodes v. Scottsdale Cmty. Coll.](#), No. CV-18-02063-PHX-RCC, 2019 WL 7194694 (D. Ariz. Dec. 26, 2019).

Students and Instruction

Former student failed to establish a qualifying disability required to support claims of discrimination under [Section 504 of the Rehabilitation Act](#) and [Title II of the Americans with Disabilities Act](#) because he did not allege any limitations on major life activities. [Ufeli v. Texas A & M Univ. Sys.](#), No. 2:19-CV-00106, 2019 WL 7568231 (S.D. Tex. Dec. 12, 2019).

Former student's claim that she did not personally receive or benefit from student loan funds disbursed to the university and credited toward her account did not constitute a genuine issue of material fact sufficient to defeat the state's motion for summary judgment. The state was permitted to recover funds had and received. [Thrower v. Texas](#), No. 03-18-00800-CV, 2019 WL 7342248 (Tex. App.—Austin Dec. 31, 2019, no pet.) (mem. op.)



Recent Regulations and Guidance

The Texas Comptroller of Public Accountants amended several [regulations](#) concerning the arbitration of appraisal review board determinations.

The Employee Retirement System of Texas adopted new [regulations](#) concerning the assignment of death benefits for funeral services in response to statutory changes made during the 86th Legislative Session.

The Texas Ethics Commission made [nonsubstantive revisions](#) to several regulations concerning thresholds for reporting political contributions and expenditures.

The Texas Real Estate Commission adopted several amendments to [regulations](#) in response to statutory

changes made during the 86th Legislative Session concerning licensing requirements for real estate agent applicants and requirements for education providers, courses, and instructors.

The Texas State Board of Dental Examiners adopted several amendments to [regulations](#) in response to statutory changes made during the 86th Legislative Session related to continuing education requirements for dental hygienist licensees.

The Texas State Board of Pharmacy amended [regulations](#) concerning continuing education requirements for pharmacy technicians and pharmacy technician trainees to address statutory changes made during the 86th Legislative Session.



In the News

The U.S. Department of Education [proposed rules](#) regarding the equal treatment of religious organizations by colleges.

The U.S. Department of Education [issued a letter](#) addressing the application of the Family Educational Rights and Privacy Act (FERPA) to the disclosure of student directory information to the U.S. Census Bureau for the 2020 Census.

The U.S. Department of Education and the Office of Civil Rights for the U.S. Department of Health and Human Services released an [updated joint guidance](#) addressing the application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to records maintained on students.